UNITED NATIONS

S

Security Council

Distr.
GENERAL

S/AC.26/1999/3
18 March 1999

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SIXTH INSTALMENT OF "E3" CLAIMS

GE.99-60951

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10)(the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38 (e) of the Rules, concerning eight claims included in the sixth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules. These include the date of filing with the Commission and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities ("category 'E' claims").

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

3. The status and functions of a Panel of Commissioners operating within the framework of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

4. Within the Commission, the Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in

principle compensable and had in fact been incurred by a given claimant. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the sixth instalment

5. On 3 August 1998, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of the claims as unusually large or complex within the meaning of article 38 (d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of 3 August 1998, pursuant to article 38 (c) of the Rules.

6. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by claimants in response to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-first report of the Executive Secretary which was issued on 8 October 1997 in accordance with article 16 of the Rules.

7. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants a loss adjusting firm with international and Persian Gulf experience to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed the Panel's expert consultants to prepare comprehensive reports on each of the claims, stating their opinions on the appropriate valuation of each of the compensable losses and setting forth the evidence supporting those opinions. The Panel reviewed those reports with the Panel's expert consultants.

8. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. The claims

9. This report contains the Panel's findings with respect to the following claims:

(a) Voest-Alpine Aktiengesellschaft, a corporation organized under the laws of the Republic of Austria, which seeks compensation in the total amount of 255,203.24 Austrian schillings, or US$23,205 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(b) Dredging International N.V., a corporation organized under the laws of the Kingdom of Belgium, which seeks compensation in the total amount of 27,673,214 Belgian francs, or US$861,960 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(c) Chemokomplex Contracting & Trading Company, a corporation organized under the laws of the Republic of Hungary, which seeks compensation in the total amount of US$22,012 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(d) Butec S.A.L., a corporation organized under the laws of the Lebanese Republic, which seeks compensation in the total amount of US$8,297,782 and 11,375 Iraqi dinars (ID), for the total of US$8,334,278 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(e) G.P. "Beton" A.D. - Construction Company, a corporation organized under the laws of the former Yugoslav Republic of Macedonia, which seeks compensation in the total amount of US$3,397,584 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(f) Budimex Engineering and Construction Sp. Z.o.o., a corporation organized under the laws of the Republic of Poland, which seeks compensation in the total amount of US$6,018,845 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(g) Binec Industri AB, a corporation organized under the laws of the Kingdom of Sweden, which seeks compensation in the total amount of

2,143,874 Swedish kronor, or US$372,395 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait; and

(b) Contracts Administration Limited, a corporation organized under the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the total amount of US$588,622 for losses allegedly caused by Iraq's invasion and occupation of Kuwait.

II. LEGAL FRAMEWORK

A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (S/AC.26/1988/13)(the "First 'E3' Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. The "arising prior to" clause

11. The Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

12. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

C. Application of the "direct loss" requirement

13. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

14. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in Iraq or Kuwait, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defense to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

D. Liability of Iraq

15. "Iraq" as used in decision 9 means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade. (See Iraq Country Profile 1990-91, The Economist Intelligence Unit, London, 1990, p. 10.)

E. Date of loss

16. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars.

17. With respect to the seven claims that are the subject of this report, the Panel finds that the losses occurred during the period of Iraq's occupation of Kuwait, from 2 August 1990 to 2 March 1991. It is impractical for the Panel to determine with precision the date of each individual loss that underlies the claim at issue. Accordingly, the Panel uses 2 August 1990 as the date of loss, unless otherwise established, for the claims included in this report.

F. Interest

18. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16. According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

19. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, from 2 August 1990.

G. Currency exchange rate

20. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

21. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

22. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, on 2 August 1990.

H. Evacuation losses

23. In accordance with paragraph 21 (b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

I. Valuation

24. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

25. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions established by the Panel. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a rejection of the amount claimed for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

26. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

27. Additionally, the Panel's expert consultants verified all calculations in a claim, including all calculations within a statement of claim and the evidence submitted.

28. At Panel meetings, the Panel's expert consultants presented to the Panel claim-specific reports. These reports include, but are not limited to:

(a) the claimant's name and identifying claim number;

(b) a table detailing the amount claimed and the amount for reclassified losses in United States dollars (or other currency shown on the claim form) by loss element and total;

(c) a brief description of the nature of the claimant's business and the project for which the claimant performed work, if any;

(d) the date that the claimant ceased work and the date that the claimant recommenced work, if known;

(e) an analysis of the evidence submitted and the basis of the valuation recommendation for each loss element; and

(f) a recommendation of compensation, if any, by category of loss and total for all categories, with explanatory comments.

J. Evidentiary requirements

29. Pursuant to article 35 (3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

30. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". In addition, claimants were instructed to include with the statement of claim the following particulars:

"(a) The date, type and basis of the Commission's jurisdiction for each element of loss ...;

(b) The facts supporting the claim;

(c) The legal basis for each element of the claim;

(d) The amount of compensation sought, and an explanation of how this amount was arrived at."

31. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant pursuant to the Rules requesting specific information and documentation regarding the loss ("claim development letter"). In reviewing the subsequent submissions, the

Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

32. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. VOEST-ALPINE AKTIENGESELLSCHAFT MBH

33. Voest-Alpine Aktiengesellschaft ("Voest-Alpine"), an Austrian corporation, seeks compensation in the amount of US$23,205 for losses related to bank guarantee commissions from 27 August 1991 to 28 February 1993, and, in addition, commissions accruing at a rate of US$1,289 a month thereafter.

Table 1. Voest-Alpine's claim

Claim element	Claim amount (US$)
Bank guarantee commissions from 27 August 1991 to 28 February 1993	23,205
Bank guarantee commissions from 1 March 1993 onwards (US$1,289 per month)	..
Total	..

A. Facts and contentions

34. Voest-Alpine entered into a contract in April 1981 with the State Organization for Iraqi Ports (the "Employer") for the supply and erection of a conveyor belt system with a ship loader in the Basrah harbour. Voest-Alpine stated that during the war between Iran and Iraq the shiploader system was damaged. A dispute arose between Voest-Alpine and the Employer over which party was to remedy the damage.

35. On 30 January 1990, Voest-Alpine and the Employer reached a settlement agreement whereby Voest-Alpine agreed to provide an electrical engineer to the Employer for a period of 12 months to provide technical assistance during the repair of the ship loader (the "Settlement Agreement"). The Employer agreed to release the bank guarantee issued by the Rafidain Bank as well as the counter guarantee issued by the Bank für Oberösterreich und Salzburg at the end of the 12 month period.

36. Voest-Alpine stated that the engineer started work at the site on 27 July 1990, but the work terminated due to Iraq's invasion of Kuwait. The engineer returned to Austria on 27 August 1990.

37. Voest-Alpine submitted a copy of a letter dated 20 November 1990 from the General Establishment of Iraqi Ports which confirmed that the engineer left the site on 26 August 1990 and requested a replacement engineer.

38. Voest-Alpine stated that if Iraq had not invaded Kuwait then Voest-Alpine would have fulfilled its obligations pursuant to the terms of the Settlement Agreement, requiring the Employer to release the bank guarantees by 27 August 1991. Voest-Alpine contends that its damage consists of costs for the maintenance of the bank guarantee from 27 August 1991.

B. Analysis and valuation

39. Voest-Alpine provided copies of the Settlement Agreement, the letter requesting the replacement engineer, and a letter from the Bank fur Oberösterreich und Salzburg dated 10 March 1993, stating the costs incurred for the bank guarantees.

40. In its First "E3" Report, the Panel found that commissions paid on bank guarantees are compensable as long as the interruption of the related performance was the direct result of Iraq's invasion of Kuwait.

41. The Panel reviewed the Settlement Agreement and finds that such agreement is a new contract unrelated to the obligations of the parties under the original construction contract. Further, the Panel finds that Voest-Alpine recalled its engineer from Iraq due to Iraq's invasion and occupation of Kuwait. Accordingly, the bank guarantee commissions are compensable in the amount of US$23,205 for the period 27 August 1991 to 28 February 1993 and in the amount of US$16,757 for the period 1 March 1993 until the filing date of Voest-Alpine's claim. In this instance, the filing receipt date was 31 March 1994.

C. Recommendation for Voest-Alpine

Table 2. Recommended compensation for Voest-Alpine's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Bank guarantee commissions from 27 August 1991 until 28 February 1993	23,205	23,205
Bank guarantee commissions from 1 Marcn 1993 to 31 March 1994	..	16,757
Total	..	39,962

42. Based on its findings regarding Voest-Alpine's claim, the Panel recommends compensation in the amount of US$39,962.

IV. DREDGING INTERNATIONAL N.V

43. Dredging International N.V. ("Dredging International"), a Belgian company, seeks compensation in the amount of US$861,960 for losses relating to insurance premiums, unproductive labour costs and evacuation costs.

Table 3. Dredging International's claim

Claim element	Claim amount (US$)
Insurance premiums	181,403
Unproductive labour	571,555
Payment or relief to others	109,002
Total	861,960

A. Insurance premiums

1. Facts and contentions

44. On 28 October 1989, the General Establishment of Iraqi Ports, Ministry of Transport and Communication, entered into a contract with a joint venture consisting of Boskalis International B.V. and Volker Stevin Dredging B.V. for dredging works in Umm Qasr, Iraq. Dredging International entered into the Agreement of Hire of Dredging Equipment with Volker Stevin Dredging B.V. on 5 January 1990.

45. Dredging International seeks compensation in the amount of US$181,403 for war risk insurance premiums for its dredger the "Mascaret" and its ship the "Ruebens", incurred because of Iraq's invasion of Kuwait. The dredger Mascaret commenced work in Iraq on 25 March 1990. The ship Ruebens was located in Abu Dhabi, United Arab Emirates, at the time of Iraq's invasion of Kuwait. In its claim, Dredging International also included US$860 for "legal advice" and US$7,787 for "administration costs" such as files, correspondence, meetings and phone calls. Dredging International received insurance payments in the amount of US$983 and US$210,256 with respect to losses incurred for the Ruebens.

2. Analysis and valuation

46. Pursuant to the Agreement of Hire of Dredging Equipment, Volker Stevin Dredging B.V. was required to insure the Mascaret. Dredging

International had no responsibility to insure the Mascaret and did not demonstrate that it did so. Furthermore, Dredging International received payment for a loss with respect to the Ruebens. The Panel finds that Dredging International failed to demonstrate that it incurred any loss with respect to payment of premiums for war risk insurance.

47. A recommendation on the claim for legal fees and administration costs normally would be deferred. In a letter dated 6 May 1998, the Executive Secretary requested the panels of Commissioners not to make a decision on the compensability of claim preparation costs because the Governing Council intends to resolve the issue of claims preparation costs in the future. However, the Panel recommends no compensation for legal fees and administration costs incurred by Dredging International as the underlying claim for insurance premiums is not compensable.

3. Recommendation

48. The Panel recommends no compensation for insurance premiums.

B. Unproductive labour costs

49. Dredging International seeks compensation in the amount of US$571,555 for losses relating to "additional labour costs" of 14 employees who worked in Iraq until their departure on 2 December 1990 and for administration costs.

50. Dredging International stated that work was completed by 16 September 1990. Dredging International stated that it incurred additional labour costs in the amount of US$551,309 outside the scope of the work cycle because these employees were unable to leave Iraq after Iraq's invasion of Kuwait.

51. In its First "E3" Report, the Panel found it reasonable to conclude that a decline in productivity is a direct result of the invasion. The Panel finds that Dredging International provided satisfactory evidence of the unproductive labour costs of its 14 employees. However, the Panel finds that Dredging International overstated the work periods for two of its employees, requiring a reduction in the amount of US$18,549 from the total loss amount. The Panel finds that Dredging International submitted

sufficient evidence to support its additional labour costs in the amount of US$532,760.

52. Dredging International also seeks compensation for administrative costs in the amount of US$20,246 as part of its claim for additional labour costs. The Panel finds that Dredging International did not submit sufficient evidence in support of its administrative costs.

53. The Panel recommends compensation in the amount of US$532,760 for unproductive labour costs.

C. Payment or relief to others

54. Dredging International seeks compensation in the amount of US$109,002 for losses relating to evacuation costs of its employees. Dredging International included the costs of a "welcome home party" (US$55,678), commemorative works of art (US$26,008), airfare from Zurich to Brussels for five people (US$2,773), and other administrative costs for the repatriation of 14 employees (US$24,543).

55. The Panel finds that all costs related to the "welcome home party", including the commemorative works of art commissioned by Dredging International to acknowledge the return of its employees, are not losses directly related to Iraq's invasion and occupation of Kuwait.

56. The Panel finds that only the cost of the airfare from Zurich to Brussels for Dredging International's two employees is compensable. Dredging International submitted sufficient evidence of the payment in the amount of US$739 for the airfare for those two employees. All other items included in the claim for evacuation costs are not recommended for compensation because such costs are not directly related to Iraq's invasion of Kuwait.

57. The Panel recommends compensation in the amount of US$739 for payment or relief to others.

D. Recommendation for Dredging International

Table 4. Recommended compensation for Dredging International

Claim element	Claim amount (US$)	Recommended compensation (US$)
Insurance premiums	181,403	nil
Unproductive labour	571,555	532,760
Payment or relief to others	109,002	739
Total	861,960	533,499

58. Based on its findings regarding Dredging International's claim, the Panel recommends compensation in the amount of US$533,499.

V. CHEMOKOMPLEX CONTRACTING AND TRADING COMPANY

59. Chemokomplex Contracting and Trading Company ("Chemokomplex"), a Hungarian company, is seeking compensation in the amount of US$22,012 for loss and destruction of tangible assets that were located in Kuwait prior to the invasion by Iraq.

A. Facts and contentions

60. Chemokomplex states that it is the legal successor to Chemokomplex Hungarian Trading Company of Machines and Equipment for the Chemical Industry (the "Predecessor Company"), a company registered with the Metropolitan Court in Budapest, Hungary, for an indefinite term. Chemokomplex states that it inherited the assets relating to foreign trade of the Predecessor Company and it is, therefore, entitled to file a claim for compensation for the losses suffered by the Predecessor Company. The Panel finds that Chemokomplex can properly bring this claim before the Commission.

61. Chemokomplex stated that it lost office equipment and two cars because of Iraq's invasion of Kuwait.

B. Analysis and valuation

62. Chemokomplex did not submit sufficient evidence regarding the loss of the two cars. It provided the registration number for one car and the motor and chassis number for the second car. Chemokomplex did not provide information with respect to the age or acquisition costs of the vehicles.

63. In support of the claim for loss and destruction of the office equipment, Chemokomplex submitted two corresponding inventory lists, one dated 30 September 1989 and one dated 30 September 1991. Neither list establishes ownership, age, cost or presence of the equipment in Kuwait.

64. Chemokomplex did not reply to the claim development letters sent to it by the secretariat. Therefore, the Panel reviewed the claim as originally submitted. The Panel finds that Chemokomplex did not submit sufficient evidence to support its stated loss of tangible property.

C. Recommendation for Chemokomplex

65. Based on its findings regarding Chemokomplex's claim, the Panel recommends no compensation.

VI. BUTEC S.A.L

66. Butec S.A.L. ("Butec"), a Lebanese company, seeks compensation in the amount of US$8,334,278 for contract losses, tangible property losses and evacuation costs.

Table 5. Butec's claim

Claim element	Claim amount (US$)
Contract losses	
Gas compression station contract	5,282,292
Cable factory contract	2,897,486
Tangible property losses	54,500
Demobilization costs	100,000
Total	8,334,278

A. Contract losses

1. Gas compression station

(a) Facts and contentions

67. Butec signed a contract on 30 November 1989 with the State Establishment of Pipelines of Iraq (the "Employer") to complete the inlet and outlet gas compression station of a petrochemical plant in Basra, Iraq. The total value of the contract was US$11,434,084. Butec seeks compensation in the amount of US$5,282,292 for contract losses related to the gas compression station.

68. The scope of Butec's work included the design and supply of all materials, apparatus, equipment and spare parts needed for the completion of the gas compression station. Pursuant to the terms of the contract, manufacturing was to commence in February 1990, and delivery of the equipment was to start in July 1990 and finish in October 1990.

69. Butec stated that the design work was completed and submitted to the Employer in May 1990. For the unpaid portion of the design works, Butec seeks compensation in the amount US$472,567.

70. With respect to material and equipment, Butec seeks compensation in the amount of US$4,809,725. Butec stated that all material had been ordered but only a small portion of the material had reached Iraq before the invasion of Kuwait. Further, Butec stated that material and equipment that was in transit to Iraq was rerouted to other destinations because of the trade embargo. The balance of equipment was either at an advanced stage of manufacture or was ready for shipment. Butec stated that completion of the project was frustrated because of Iraq's invasion of Kuwait.

71. Butec stated that after the invasion of Kuwait by Iraq, it requested the Employer to terminate the contract. In a telex dated 3 September 1990, the Employer refused to terminate the contract and requested Butec to continue performance.

(b) Analysis and valuation

72. The Panel finds that Butec did not submit sufficient evidence to demonstrate its contract losses.

73. With respect to the design work, Butec stated it completed the performance and delivered the designs to the Employer in May 1990. Butec did not submit documents that would indicate to the Panel the dates of performance, the hourly charges, or the terms of payment. Because Butec did not submit documents that would identify the date on which the design work was performed, the Panel draws the inference from the correspondence between Butec and the Employer that the work for the design was performed prior to 2 May 1990. The Panel finds that the loss is a debt of Iraq that arose prior to the invasion.

74. With respect to the materials and equipment, the Panel finds that Butec delivered to the Employer less than 4 per cent of the value of the material and equipment ordered pursuant to the contract. Although Butec submitted a telex message dated 24 August 1990 sent to the Employer in which Butec detailed the delivery status of the material and equipment, Butec did not submit any other evidence that Butec had in fact paid its suppliers for the material and equipment. Further, the Panel finds that Butec received payment for the 4 per cent of the material and equipment delivered to the Employer.

75. Additionally, Butec stated that the material and equipment in transit was rerouted to other destinations because of the trade embargo. Butec did not state that the invasion of Kuwait was a separate and distinct cause of its losses related to material and equipment in transit. After rerouting the material and equipment in transit because of the trade embargo, Butec proceeded with the contract at its own risk.

76. Even assuming that the invasion of Kuwait and the trade embargo were parallel causes of Butec's stated losses, Butec failed to take steps to mitigate its losses. Butec submitted documents which indicate that at least one supplier did not deliver the ordered equipment and that the supplier offered to resell the equipment to reduce Butec's overall liability. For Butec, the refusal to take steps to reduce its overall exposure was an economic decision whose consequences were not a direct result of Iraq's invasion and occupation of Kuwait.

77. The Panel finds that the amounts paid to Butec by the Employer with respect to the delivered material and equipment exceeded the amounts Butec stated are due and owing. Further, the Panel finds that Butec did not submit sufficient evidence to demonstrate that its losses incurred under the gas compression station contract were the direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommendation

78. The Panel recommends no compensation for contract losses related to the gas compression station.

2. Cable factory

(a) Facts and contentions

79. Butec signed a contract with UR General Establishment for Engineering Industries (the "Employer") on 2 April 1989 to build a cable factory in Naissiriyah, Iraq. Butec was to design the civil works, supply the equipment and material for the utilities, erect the utilities and execute the related civil works. The total value of the contract was over US$10,600,000.

80. Butec stated that by July 1990 it was performing its obligations under the contract and that it had already finished the design drawings. Butec seeks compensation in the amount of US$625,970 for the cost of the design of the civil works and utilities. Butec also seeks compensation for expenses related to overhead, mobilization, salaries of personnel allocated to project management, and financial costs in the amount of US$775,000.

81. Butec seeks compensation in the amount of US$2,257,000 for loss of profits on the cable factory project.

82. From the total contract loss in the amount of US$3,657,970, Butec has deducted the advance in the amount of US$760,484 received from its Employer, and seeks compensation in the amount of US$2,897,486 for contract losses related to the cable factory.

(b) Analysis and valuation

83. Pursuant to the terms of the contract, the cost of the design works was not directly recoverable from the Employer. The Bills of Quantity specified that the design work was free of charge. The Panel finds that the design work was part of the overheads that were included in the pricing of the items included in the Bill of Quantity.

84. With respect to the overheads, mobilization costs, salaries, and financial costs, the Panel finds that these costs are not normally chargeable to the Employer, but are costs that are part of the pricing of the contract.

85. Finally, the Panel finds that Butec did not submit sufficient evidence to support its claim for loss of profits on the cable factory project. In order to recommend compensation for loss of profits, the Panel requires clear and convincing evidence of ongoing and expected profitability. In support of its allegation for loss of profits, Butec submitted a 1990 cash flow statement of uncertain origin. Butec did not provide clear and convincing evidence of its projected or actual revenues or costs for the cable factory or similar projects.

(c) Recommendation

86. The Panel recommends no compensation for contract losses related to the cable factory.

B. Loss of tangible property

87. Butec seeks compensation in the amount of US$54,500 for office equipment confiscated by the Iraqi authorities from its office in Iraq. The property listed consists mostly of computers and office furniture. Butec provided letters from the Iraqi authorities dated 1993 which indicate that the equipment was in the possession of the "Manufacturing Military Committee, Fao General Establishment Companies Department".

88. Butec stated that it did not have evidence of the specific tangible property lost or damaged as a direct result of Iraq's invasion and occupation of Kuwait. Butec did not demonstrate its ownership, the age or value of the office equipment, only that the office equipment is in the possession of an Iraqi governmental agency. Further, Butec did not demonstrate that such office equipment was irretrievably lost or damaged. The Panel finds that Butec did not submit sufficient evidence to support its tangible property loss.

89. The Panel recommends no compensation for loss of tangible property.

C. Demobilization

90. Butec seeks compensation in the amount of US$100,000 for demobilization costs. Butec stated that three months after the invasion of Kuwait by Iraq, Butec considered the contracts frustrated and demobilized its workforce despite its willingness to resume the work.

91. The Panel finds that Butec did not provide sufficient information or evidence of demobilization costs. In support of its loss, Butec only submitted a cash flow statement for a related entity. The cash flow statement does not demonstrate the payment of expenses incurred for demobilization costs by the related entity or by Butec.

92. The Panel recommends no compensation for demobilization costs.

D. Recommendation for Butec

Table 6. Recommended compensation for Butec's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses		
Gas compression station contract	5,282,292	nil
Cable factory contract	2,897,486	nil
Tangible property losses	54,500	nil
Demobilization costs	100,000	nil
Total	8,334,278	nil

93. Based on its findings regarding Butec's claim, the Panel recommends no compensation for Butec.

VII. S.P. "BETON" A.D. CONSTRUCTION COMPANY

94. G.P. "Beton" A.D. Construction Company ("Beton"), a company registered with the District Economic Court in Skopje, Macedonia, seeks compensation in the amount of US$3,397,584 for contract losses relating to services it provided as a sub-contractor during the construction of the Oil Complex Project in Baghdad (the "Project").

A. Facts and contentions

95. Beton was a sub-contractor of Ingra Engineering and Construction Company ("Ingra"). Ingra entered into a contract dated 1 January 1981 with the Minister of Housing and Construction for the Republic of Iraq. Beton concluded its work on the Project in 1989 and the certificate of completion of the works was signed and issued on 15 June 1989.

96. On 17 April 1992, Beton, the Ministry of Economy of the Republic of Macedonia and Ingra entered into an agreement with Gulf Enterprises Inc. ("Gulf"), whereby Beton and Ingra authorized Gulf to collect amounts due for the Project. Although the agreement specifies the amounts due both to Beton and Ingra individually, the agreement authorizes Gulf to collect the entire amount due in respect of the work performed on the Project. In its reply to the claim development letter, Beton explained that the agreement that authorized Gulf to collect the amounts owed on the Project was valid only for a period of one year and was not extended.

B. Analysis and valuation

97. The Panel finds that the contract losses were for work performed prior to 2 May 1990. The loss is characterized as a debt of Iraq that arose prior to Iraq's invasion of Kuwait. Because the stated loss is outside the jurisdiction of the Commission, the Panel does not reach the issue of the standing of Beton to file its own claim in the light of its agreement with Gulf.

C. Recommendation for Beton

98. Based on its findings regarding Beton's claim, the Panel recommends no compensation.

VIII. BUDIMEX ENGINEERING AND CONSTRUCTION SP. Z.O.O

99. Budimex Engineering and Construction Sp. Z.o.o. ("Budimex"), a Polish company, seeks compensation in the amount of US$6,018,845 for contract losses, loss of profits, evacuation costs, claim preparation costs, and interest incurred with respect to seven contracts with Iraq.

100. Budimex stated that for more than 20 years it was doing business in Iraq in the field of civil engineering works as well as providing the services of its technical specialists to Iraqi state companies and agencies.

Table 7. Budimex's claim

Claim element	Claim amount (US$)
Contract losses	703,677
Loss of profits	4,736,346
Evacuation costs	101,197
Claim preparation costs	477,625
Total	6,018,845

A. Contract losses

1. Facts and contentions

101. Budimex seeks compensation in the amount of US$703,677 for the United States dollar portion of unpaid work identified in invoices issued under four of the contracts with Iraq. Budimex stated that all of the invoices submitted pursuant to the contracts were for work performed after 2 May 1990.

102. Budimex acknowledged that the portions of the invoices payable in Iraqi dinars have all been paid. Budimex stated that this indicates the respective employers' acceptance of the work performed. Additionally, Budimex submitted transfer orders addressed to the relevant Iraqi banks, requesting payment of the amounts due in United States dollars. Budimex also received an advance payment in both Iraqi dinars and United States dollars from the respective employers. Finally, Budimex provided a letter dated 5 November 1990 that it sent to the Technical Corps for Special

Projects listing the amounts that remained unpaid. Budimex attached the respective employers' replies, confirming the amounts due and owing.

2. Analysis and valuation

103. The Panel finds that Budimex submitted sufficient evidence of its contract losses. For each of the contracts, Budimex submitted copies of invoices with the corresponding timesheets which demonstrate that all work included in each invoice was performed after 2 May 1990. Each invoice had been approved for payment by the employer's representative. With each invoice Budimex also submitted the respective transfer orders for payment by the respective employers.

104. For each of the contracts at issue in this claim, the Panel finds that Budimex has submitted sufficient evidence of its losses. The Panel adopts the calculations of its experts to arrive at the recommended compensation before deduction of the advance payments made by each employer as set forth in the following table.

Table 8. Budimex contracts

Contract	Amount claimed (US$)	Recommended compensation before advance (US$)
SEIS steel plant	209,464	20,054
Petro-chemical complex No. 2	284,128	284,128
Project 65	190,556	185,468
SEIS Ashtar 1989	19,529	19,529
Total	703,677	509,179

105. The employers on the SEIS steel plant, Project 65 and SEIS Ashtar 1989 contracts paid an advance to Budimex under the terms of their respective contracts. Budimex confirmed that it had not repaid the advances to the employers. For each of these contracts, the Panel finds that the advances paid by the employer should be deducted from the recommended compensation amounts set forth in Table 8. The advance amounts to be deducted and the revised recommended compensation amounts are as follows:

(a) after deducting the advance in the amount of US$45,000 received for the SEIS steel plant from the recommended compensation in the amount of US$20,054, the net recommended compensation for this contract is nil;

(b) after deducting the advance in the amount of US$48,000 received for Project 65 from the recommended compensation in the amount of US$185,468, the net recommended compensation is US$137,468; and

(c) after deducting the advance in the amount of US$35,000 received for SEIS Ashtar 1989 from the recommended compensation in the amount of US$19,529, the net recommended compensation is nil.

106. Based on the findings above, the Panel recommends compensation in the amount of US$284,128 for the Petrochemical complex No. 2 and US$137,468 for Project 65 for a total sum of US$421,596.

3. Recommendation

107. The Panel recommends compensation in the amount of US$421,596 for contract losses.

B. Loss of profits

1. Facts and contentions

108. Budimex seeks compensation in the amount of US$4,736,346 for loss of profits during the period from the date of suspension of each of the seven contracts in question until 2 March 1991 and for employment and business operation costs that Budimex incurred during the same period.

109. Budimex stated that it could not avoid or otherwise reduce its normal employment costs and overall business operation costs because it was not in a position to redeploy its technical specialists to other contracts. Consequently, Budimex contends that it had to bear those costs without achieving expected earnings.

2. Analysis and valuation

110. Budimex adopted two methods of calculating its losses. If the contract in question provided for an estimated total contract price, such

price was divided over the total duration of the contract and multiplied by the number of months between the date of the suspension of the contract and 2 March 1991. If the contract in question did not provide for an estimated total contract price, but stipulated the number of personnel to be provided and their wages, the loss was calculated by multiplying the total number of work hours between the date of suspension of the contract and 2 March 1991 by the wages in question.

111. The claim for loss of profits was presented on the basis that all persons engaged to perform work on the contracts were employed at the time of the invasion, that their employment was continuous until at least 2 March 1991, that the full costs of their employment while working in Iraq continued to be paid until 2 March 1991 (notwithstanding that they had returned to Poland or in some cases may not even have gone to Iraq) and that all such persons were not engaged in any other work whatsoever until 2 March 1991.

112. Although Budimex submitted the contracts and invoices related to the various projects, Budimex's allegation that it would have earned a profit is unsupported as no financial statements, management reports, budgets, accounts or progress reports were provided. Budimex did not provide a breakdown of its anticipated revenues or costs, whether actual or projected. Because the Panel requires clear and convincing evidence to demonstrate loss of profits, the Panel finds that Budimex did not submit sufficient evidence to demonstrate such loss.

3. Recommendation

113. The Panel recommends no compensation for loss of profits.

C. Evacuation costs

1. Facts and contentions

114. Budimex seeks compensation in the amount of US$101,197 for costs incurred in the evacuation of its employees from Iraq between August 1990 and November 1990. According to Budimex, the costs included expenses typically associated with evacuations, such as lodging, meals and travel. Although its statement of claim specified that approximately 147 employees

were evacuated, the documents submitted by Budimex indicate that there were actually 149 employees evacuated.

115. Budimex stated that the Polish Ministry of Foreign Economic Cooperation (the "Ministry") and the employees themselves initially bore some of the costs of the evacuations, but that these costs were later reimbursed by Budimex.

2. Analysis and valuation

116. The Panel finds that under the terms of each of the contracts, each employer was required to pay the costs of repatriation of Budimex employees. Payment of the evacuation costs by Budimex was outside the terms of the contract. The Panel finds that the cost incurred by Budimex to evacuate its employees was an extraordinary cost that was the direct result of Iraq's invasion of Kuwait.

117. The Panel finds that Budimex submitted sufficient evidence of the evacuation of 131 of its employees. The documents submitted by both Budimex and the Ministry demonstrate that Budimex paid the Ministry an amount of US$93,402 for the evacuation of 125 Budimex employees. Further, Budimex submitted evidence of the reimbursement of US$4,482 for evacuation costs relating to six employees who had individually paid their own evacuation costs. However, Budimex did not submit sufficient evidence for the remaining 18 employees who were evacuated by the Ministry. For these 18 employees, Budimex submitted evidence of a demand for payment from the Ministry, but it did not submit evidence of such payment.

3. Recommendation

118. The Panel recommends compensation in the amount of US$97,884 for evacuation costs.

D. Claim preparation costs

119. Budimex seeks compensation in the amount of US$477,625 for legal fees incurred in the preparation of its claim. Of the total amount claimed, US$31,250 is in the form of a fixed fee. The remaining amount is contingent upon the success of the claim and is expressed as a percentage

of the demand. Budimex submitted a copy of the contract with its lawyers which confirms the fees in question.

120. The Executive Secretary of the Commission has directed the panels of Commissioners not to consider claim preparation costs at this time because the Governing Council intends to resolve the issue of claim preparation costs in the future. Therefore, the Panel makes no recommendation for claim preparation costs.

E. Recommendation for Budimex

Table 9. Recommended compensation for Budimex's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	703,677	421,596
Loss of profits	4,736,346	nil
Evacuation costs	101,197	97,884
Claim preparation costs	477,625	nil
Total	6,018,845	519,480

121. Based on its findings regarding Budimex's claim, the Panel recommends compensation in the amount of US$519,480 for Budimex.

IX. BINEC INDUSTRI AB

122. Binec Industri AB ("Binec"), a Swedish corporation, seeks compensation in the amount of US$372,395 for contract losses, bank guarantee costs and interest. Binec manufactures and assembles specialty steel works.

Table 10. Binec's claim

Claim element	Claim amount (US$)
Contract losses	345,870
Bank guarantee commissions	26,525
Total	372,395

A. Contract losses

1. Facts and contentions

123. In January 1990, Binec signed a purchase agreement with the International Contractor's Group S.A.K. (the "Purchaser") for the manufacture, delivery, and assembly of a steel antenna mast for the New Telecommunications Center and New Antenna Tower Project in Kuwait. The Purchaser was a partner in a consortium (ICG/SOGEA S.A. Consortium Joint Venture) that entered into a contract with the Government of Kuwait, Ministry of Public Works (the "Employer").

124. The purchase agreement is a fixed price agreement for the manufacture, delivery and assembly of the antenna, subject to amendment if extra quantities of steel are used. In a letter dated 22 January 1990, Binec revised the contract price and the time schedule for delivery that was stated in the purchase agreement. The letter stated that the antenna was to be delivered on site between 17 September 1990 and 29 September 1990. The Purchaser signed and stamped the letter on 31 January 1990 to indicate its agreement.

125. Binec commenced production of the antenna in April 1990, but considered delivery of the antenna impossible due to Iraq's invasion of Kuwait. Binec stored the antenna in a warehouse in Lulea, Sweden. After deducting an advance payment in the amount of US$165,555, Binec seeks compensation in the amount of US$345,870 for contract losses.

126. As a part of its contract losses, Binec also seeks compensation for costs incurred in respect of "stoppage of project". In this portion of its claim, Binec included losses related to surplus manpower costs, cancellation of sub-contracts, transportation costs of the antenna and "capitalization" expenses.

127. Binec stated that both parties were of the opinion that the value of the components already completed was less than the advance payment Binec had received. Binec contends that, when it restarted production in the spring of 1994, the components of the antenna had to be reproduced because of damage suffered during storage.

2. Analysis and valuation

128. Although it provided copies of the purchase agreement and appendices, Binec did not provide copies of applications for payment, payment certificates, progress reports, invoices and actual payments received. Even so, the Panel finds that both Binec and the Purchaser agreed that Binec had been overpaid for the production costs completed at the time of the invasion.

129. The Purchaser submitted its own claim to the Commission. In that claim, the Purchaser stated that it resumed activities in Kuwait in 1992. On 26 August 1993, the Purchaser stated that it signed a new contract with the Employer to complete the telecommunications tower project. Binec did not disclose whether it participated in the new contract.

130. The Panel finds that the advance payment covered the cost of the components already manufactured. The damage to the antenna that occurred during storage in Sweden is not a direct result of Iraq's invasion and occupation of Kuwait. The Panel further finds that Binec did not submit sufficient evidence of the additional amounts it incurred with respect to additional work or the "stoppage of the project."

3. Recommendation

131. The Panel recommends no compensation for contract losses.

B. Bank guarantee commissions

132. Binec seeks compensation in the amount of US$26,525 for the cost of establishing and maintaining bank guarantees under the contract from 1 June 1990 until 31 December 1992.

133. Binec did not provide the bank guarantees or proof of payment of the bank guarantee commissions. The Panel finds that Binec did not submit sufficient information or documentation to support this loss item.

134. The Panel recommends no compensation for bank guarantee commissions.

C. Recommendation for Binec

Table 11. Recommended compensation for Binec's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	345,870	nil
Bank guarantee commissions	26,525	nil
Total	372,395	nil

135. Based on its findings regarding Binec's claim, the Panel recommends no compensation.

X. CONTRACTS ADMINISTRATION LIMITED

136. Contracts Administration Limited, a private limited company incorporated in Jersey, Channel Islands, seeks compensation in the amount of US$588,622 for loss of profits, loss of future profits and loss of tangible property. Contracts Administration Limited is a management consultant to the international construction industry. Contracts Administration Limited stated it had established headquarters in Kuwait City and was working on 12 projects in Kuwait for nine different clients.

Table 12. Contracts Administration Limited's claim

Claim element	Claim amount (US$)
Loss of profits	460,953
Loss of future profits	68,969
Loss of tangible property	58,700
Total	588,622

A. Loss of documents

137. In its reply to the claim development letter, Contracts Administration Limited provided a comprehensive statement of claim. Contracts Administration Limited revised downward the amount claimed for loss of profits. It did not, however, provide any evidence to support its claim. Contracts Administration Limited stated that its head office in Kuwait was looted during the Iraqi invasion and that all documents and records were lost or destroyed. Contracts Administration Limited asserts that it is therefore unable to produce the evidence requested by the secretariat. Contracts Administration Limited also stated that it did not maintain any records at its offices in Jersey or at the offices of its accountants or lawyers in Jersey.

138. Contracts Administration Limited contended that it tried to contact one of its clients, International Contractor's Group (ICG), but that it was unable to do so as the company appeared to have ceased trading after Iraq's invasion of Kuwait. However, ICG submitted its own claim to the Commission. In its claim, ICG stated it resumed its activities in Kuwait in 1992. ICG also stated that a new contract was signed on 26 August 1993 to complete the telecommunications tower project. Further, the claim

submitted by ICG included correspondence between ICG and Contracts Administration concerning the project.

139. In its decision 46 (S/AC.26/Dec.46 (1998)), the Governing Council stated that "in accordance with the Provisional Rules for Claims Procedure and the criteria established by the Governing Council for category "D", "E" and "F" claims, no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant".

140. The Panel is not persuaded by the statements of Contracts Administration Limited with respect to its inability to provide adequate documentation or information concerning its stated losses. Contracts Administration Limited did not demonstrate its effort to reconstruct its business records from third party sources and further omitted certain evidence that the Panel examined from other claimants.

141. The Panel finds that Contracts Administration Limited's statements regarding its inability to submit sufficient evidence to support its losses is not credible.

B. Loss of profits

142. Contracts Administration Limited seeks compensation in the amount of US$460,953 for loss of profits on five separate contracts in Kuwait. Contracts Administration Limited stated that it lost earnings on each of the projects and calculated its loss from 2 August 1990 until the planned completion date of each project. Contracts Administration Limited asserted that it generated revenue based on two types of services: monthly professional services to the client and negotiation of contractual claims on behalf of the client.

143. In its original statement of claim, Contracts Administration Limited calculated its loss of profits claim as 15 per cent of its projected earnings. In its revised statement of claim, Contracts Administration Limited stated its revenue, subtracted its estimated costs, and claimed the difference as the amount of its loss of profits on works in progress. However, Contracts Administration Limited did not provide specific information concerning its revenues or estimates of costs.

144. Contracts Administration Limited's statement that a net profit would have been made is unsupported as no financial statements, management reports, budgets, accounts, time schedules or progress reports were provided.

145. In the First "E3" Report, the Panel held that claimants must provide clear and convincing evidence of ongoing and expected profitability to support a claim for loss of profits. In the absence of such evidence, the Panel will not recommend compensation for loss of profits.

146. The Panel finds that Contracts Administration Limited did not submit sufficient, clear and convincing evidence of its loss of profits.

147. The Panel recommends no compensation for loss of profits.

C. Loss of future profits

148. Contracts Administration Limited seeks compensation in the amount of US$268,969 for loss of future profits. Although Contracts Administration Limited stated that it was in the final stages of negotiations with a client at the time of Iraq's invasion of Kuwait, Contracts Administration Limited did not submit a copy of the draft contract to the Commission.

149. Contracts Administration Limited presented its loss of future profits claim based on its stated earnings in prior contracts, rather than on the specific terms of the draft contract with its new client.

150. Contracts Administration Limited did not present any evidence that an agreement had been reached with its new client or the terms of that agreement. The Panel finds the asserted loss of future profits to be too speculative and remote.

151. The Panel recommends no compensation for loss of future profits.

D. Loss of tangible property

152. Contracts Administration Limited seeks compensation in the amount of US$56,700 for the loss of office equipment which was located at its head office in Kuwait and at site offices in and around Kuwait. The property

listed consists mainly of computers, printers, facsimile machines and copiers.

153. Contracts Administration Limited did not submit any evidence of its ownership and acquisition costs of the office equipment, or the presence of the office equipment in and around Kuwait. The Panel finds that Contracts Administration Limited failed to provide sufficient evidence of a loss of tangible property.

154. The Panel recommends no compensation for loss of tangible property.

E. Recommendation for Contracts Administration Limited

Table 13. Recommended compensation for Contracts Administration Limited

Claim element	Claim amount (US$)	Recommended compensation (US$)
Loss of profits	460,953	nil
Loss of future profits	68,969	nil
Loss of tangible property	58,700	nil
Total	588,622	nil

155. Based on its findings regarding Contracts Administration Limited's claim, the Panel recommends no compensation.

XI. SUMMARY OF RECOMMENDATIONS

156. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) Voest-Alpine Aktiengesellschaft (Austria): US$39,962;

(b) Dredging International N.V. (Belgium): US$533,499;

(c) Chemokomplex Contracting & Trading Company (Hungary): nil;

(d) Butec S.A.L. (Lebanon): nil;

(e) G.P. "Beton" A.D. (the former Yugoslav Republic of Macedonia): nil;

(f) Budimex Engineering and Construction Sp. Z.o.o. (Poland): US$519,480;

(g) Binec Industri AB (Sweden): nil; and

(h) Contracts Administration Limited (United Kingdom): nil.

Geneva, 16 December 1998

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner